

# the diplomat

it's your voice

Internal Newsletter of the Department of International Relations and Cooperation

June 2009



**President Jacob Zuma, accompanied by Mrs Sizakele Zuma and Minister Maite Nkoana-Mashabane at the AU Summit**



inside:



**international relations  
& cooperation**

Department:  
International Relations and Cooperation  
REPUBLIC OF SOUTH AFRICA

## Dear Colleagues

**W**elcome to the June edition of *“the Diplomat”*. We sincerely thank all the contributors who consistently provide us with informative articles for the benefit of staff at head office and Missions. Keep up the good work.

This month we bring you the following: Minister’s dinner, President Jacob Zuma attending the 13th Ordinary Session of the African Union Summit in Libya, Minister Maite Nkoana-Mashabane’s visit to New York and subsequent meeting with UN Secretary General Ban Ki-moon, the Diplomatic Academy’s achievement of a critical milestone – nationally recognised qualifications, view on the world – living in Norway, South African Airways flies to Cameroon, fundraiser in Beijing, Africa Day in Lisbon, and an article on South Africa, the international criminal court and the African Union: reflections on the burden of leadership.

Enjoy it! ■

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**Editor-in-Chief:**  
Nomfanelo Kota

**Editor:**  
Paseka Mokhethea

**Compilation, Sub-Editing & Proofreading:**  
Elion Von Wielligh

**Design and Layout:**  
Shaune van Wyk & Zimele Ngxongo

**Pictures:**  
Jacoline Prinsloo, Sanjay Singh & Unathi Ngamntwini

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The deadline for contributions is 24 July 2009. Contributions may be sent to [cbe000@mokhetheap@foreign.gov.za](mailto:cbe000@mokhetheap@foreign.gov.za)

All enquiries: Paseka Mokhethea @  
Tel: (012) 351-1569  
Fax: (012) 342-1192



*Minister Maite Nkoana-Mashabane delivering her speech at the Opening of Parliament Dinner*

## THE MINISTER’S OPENING OF PARLIAMENT DINNER

The Minister’s Opening of Parliament Dinner was held at the Cape Town International Convention Centre on 2nd June 2009. This dinner was hosted in Honour of the Diplomatic Corps and gave the Minister an opportunity to further acknowledge and interact with the Diplomatic Corps for their diplomatic partnership and work within South Africa. It also afforded the guests an opportunity to network on the eve of the Opening of Parliament and the State of the Nation Address that was given the following day. The Marketing Directorate within Public Diplomacy assisted with the logistical plans, as well as the implementation and running of the event.



*Deputy Minister Ebrahim Ebrahim with Palestinian Ambassador Ali Halimeh at the dinner*



▲ *Dean of the Diplomatic Corp, Libyan Ambassador Abdullah A Alzubedi at the dinner*



▲ *Minister Maite Nkoana-Mashabane with guests at the dinner*



President Jacob Zuma meeting the AU Chairperson, Libyan President Moammar El Gaddafi before the opening ceremony of the AU Heads of State Summit in Sirte, Libya

***“...We are gathered here because we believe in the fundamental principle on which the Organisation of African Unity and later the African Union were founded – the unity of the African peoples, the unity of the continent”***

## PRESIDENT JACOB ZUMA ATTENDING THE 13TH ORDINARY SESSION OF THE AFRICAN UNION SUMMIT IN LIBYA

**S**outh African President Jacob Zuma led the South African delegation to the 13th Ordinary Session of the African Union (AU) Summit that took place from 01 – 03 July 2009 in Sirte, Libya. President Zuma was supported at the Summit by International Relations Minister Maite Nkoana-Mashabane, Minister of Agriculture, Fisheries, and Forestry, Ms Tina Joemat-Pettersson and senior government officials.

The 13th Ordinary Session of the AU, convening under the theme ‘Investing in Agriculture for Economic Growth and Food Security’ was preceded by the 15th Ordinary Session of the Executive Coun-

cil, from 28 – 30 June 2009, the meeting of the Ministers of Agriculture meeting scheduled for 27 June 2009, New Partnership on Africa’s Development (NEPAD) Heads of State and Government Implementation Committee (HSGIC), 30 June 2009 and the African Peer Review (APR) Forum, 30 June 2009.

During this 13th Ordinary Session, the African Heads of State and Government discussed the challenges of agriculture in Africa, African common positions on several issues such as Economic Partnership Agreements (EPA), abuse of the principle of universal jurisdiction, the participation of Africa at the G8 Meeting in L’Aquila, Italy, administrative and

financial matters and adopted the transformation of the African Union Commission into an African Union Authority.

In his closing remarks President Zuma said:

‘...We are gathered here because we believe in the fundamental principle on which the Organisation of African Unity and later the African Union were founded – the unity of the African peoples, the unity of the continent.

This is a fundamental principle which binds us all. Even on those issues on which we fundamentally disagree, we should be guided by the principle of unity, and remain true to the founding principles of the OAU and the AU. ‘

‘...Working together we must continue to strive for unity and progress, and avoid any moves that will lead to the polarization of our continent. Our people expect that of us.

Let me conclude by committing South Africa to do Africa proud when we host the 2010 FIFA World Cup next year! ‘



Minister Maite Nkoana-Mashabane speaking at the UN High High Level Conference on World Financial and Economic Crisis and its Impact on Development. (Below) Minister Maite Nkoana-Mashabane meeting UNSG, Mr Ban Ki-moon at the UN

## MINISTER MAITE NKOANA-MASHABANE VISITS NEW YORK

**I**nternational Relations and Cooperation Minister Maite Nkoana-Mashabane participated in the United Nations High Level Conference on World Financial and Economic Crisis and its Impact on Development that was scheduled for 24-26 June 2009.

Accordingly the Conference highlighted the following issues:

- The current economic and financial crisis and its impact on development ;
- Appropriate and effective solutions to curbing the crisis while assessing future impacts of the crisis on, inter alia, employment, trade, investment and development, including the achievement of the internationally agreed development goals and the Millennium Development Goals
- The importance of the role of the United Nations (UN) and its Member States in the ongoing international discussions on reforming and strengthening the international financial and economic system and architecture.

Developing countries, in particular, viewed the global crisis as an opportunity to reform the global financial and economic regimes and to increase their say and participation in the decision-making processes and governance structures of the Bretton Woods Institutions (BWIs).

The conference further considered:

- The contributions of the UN development system to the international response to the crisis.
- Coordinated action from UN Member States aimed at minimising the impact of the global crisis on development.
- Immediate actions needed to provide assistance to the most vulnerable countries the majority of which are in Africa.

### **Background to the UN high level conference on the global financial crisis**

The UN Conference gave effect to the decision of the International Conference on Financing for Development, held in Doha,



Qatar, from 28 November to 2 December 2008, which agreed to hold a United Nations conference in 2009 on the “world financial and economic crisis and its impact on development.”

Subsequently In April 2009 former President Motlanthe joined world leaders at the G20 Summit in London, United Kingdom where South Africa stressed that a global response was required to mitigate the impact of the crisis and prevent its contagion to emerging markets and developing countries, in particular Africa.

In her contribution to the Conference Minister Nkoana-Mashabane emphasized the need for a speedy implementation of the G20 Summit resolutions in particular the deployment of resources to salvage vulnerable economies.

# THE DIPLOMATIC ACADEMY ACHIEVES A CRITICAL MILESTONE – NATIONALLY RECOGNISED QUALIFICATIONS

The then Department of Foreign Affairs took a decision in 2004 that its Foreign Service Institute (FSI) should be restructured and be aligned to the SA educational legal framework and the international practice. The principles underlining the SA education system is based on lifelong learning which is progressive in nature and also takes place within clearly defined prescripts by the South African Qualifications Authority (SAQA).

The Diplomatic Academy (previously named FSI) has successfully followed all prescripts and the three-residential training programmes are now delivered as nationally recognized certificates as follows:

- National Certificate for Mission Administration, Level 5 for Attaches is recognized as a post-matric certificate.
- National Certificate for Corporate Services Management, Level 6 for Corporate Services Managers is equivalent to a degree.
- National Diploma for Junior Diplomats (applying to both the six months programme and the Cadets') is equivalent to a post-graduate qualification.

The implication of these qualifications is that all universities will recognize them as a basis for further training for specific qualifications, as they are available on the national SAQA database. However, it may occur that some modules will not be accredited in some instances as that will depend on the content of the qualification which the person wants to pursue and the approach of each university.

Within the Diplomatic Academy, the diplomatic post-graduate qualification will allow the graduands to enter into the Master's degree in Diplomacy (MDip) which has recently been started in partnership with the University of Pretoria.

Although the Attaches and the Corporate Managers also receive a nationally recognised certificate it is not a postgraduate



◀ One of the Diplomatic Training facilitators hard at work during one of the sessions



▲ DDG Corporate Services Mr Asogan Moodley welcoming new MAC / FAAC Trainees



▲ DDG Diplomatic Training, Research and Development Ms Maud Dlomo welcoming new MAC / FAAC Trainees

qualification as the entry requirement is experience as an Assistant Director rather than a degree which is a pre-requirement for diplomatic training. However the Diplomatic Academy is in the process of aligning the administration qualifications in order to recognize prior learning and experience. Since the job description for Attaches has gradually changed over the years, as the Department of International Relations & Cooperation (DICO) improved its business systems, the new developments would have to be clarified first in order to deliver a relevant training programme.

To ensure that the procedures and processes required by SAQA are always fully guarded, the International Standards Organisation's (ISO 9001: 2008) standards have recently been implemented. To this effect the Diplomatic Academy has been audited by the South African Bureau of

Standards (SABS) and has met the requirements of the ISO Standard and will be certified as an ISO institute. To reflect this new status, the Diplomatic Academy has been given the right to utilise the ISO logo which is the confirmation that quality assurance underpins all our processes and the content of our programmes. The SABS will conduct an audit every six months to ensure that the Academy adheres to the quality standards

The process for assessing training needs in missions is underway and improvement will be done there too as we move forward. As a department we should then pat ourselves at the back at this point for having achieved this important milestone. The challenge is to protect and maintain this important step towards making the Academy, the Centre of Excellence which would make every DICO official proud.

## VIEW ON THE WORLD - LIVING IN NORWAY



*Pictures of the SA Embassy in Oslo.*



*Africa Day celebrations at the Oslo International School*

### **You are stationed at the South African Mission in Oslo. Tell us more about life in the city, its people, the food and the culture?**

Within the Oslo City boundaries you'll find half a million people, who are fairly reserved, but not unfriendly. There are more than 300 lakes in Oslo and it is the biggest city in Norway, and has been the country's capital for more than 700 years. The Government and Parliament are located here, and at the end of Oslo's main street, Karl Johans gate, you will find the Royal Palace. Oslo has a great location at the head of the Oslo Fjord, surrounded by forested hills.

During the summer, the city is a great destination for those who enjoy outdoor activities. There are several parks in the city. A ten-minute boat ride takes you to lovely beaches on the Oslo Fjord islands.

In winter Oslo has hundreds of kilometers of cross-country trails within the city boundaries, in addition to eight ski centres. The city offers an abundance of attractions, shopping possibilities and a flourishing cultural life, as well as choice of restaurants which is almost unparalleled in Scandinavia. The possibilities are numerous – whether you want to enjoy a sumptuous meal at a Michelin-starred restaurant or you prefer a brisk, refreshing dog sleigh ride in the snow-draped winter forest, however, the food prices are exorbitant.

The one traditional Norwegian dish with a claim to international popularity is the smoked salmon. It is a major export product, and could be considered the most important Norwegian contribution to mod-

ern international cuisine. Smoked salmon exists traditionally in many varieties, and is often served with scrambled eggs, dill, sandwiches or mustard sauce. Close to smoked salmon is gravlaks, (literally "dug salmon"), which is salt-and-sugar-cured salmon seasoned with dill and (optionally) other herbs and spices. Gravlaks is often sold under more sales-friendly names internationally.

Norway has a long history and strong heritage. However, an enduring feature of Norwegian culture is the nation's appreciation of the unique and unspoiled countryside, with its rich diversity of plant and animal life. Winter sports are particularly popular in Norway, giving rise to the claim that they are born with skis on their feet! The nation's associations with Norwegian history and culture are very varied.

Some people might mention the Vikings or the Sami, while others would point to internationally famous authors, composers, sportsmen and musicians such as Henrik Ibsen, Edvard Grieg, Ole-Gunnar Solskjær and a-ha. What then are the hallmarks of Norwegian culture? The following are often cited: the expeditions of Thor Heyerdah I, smoked salmon, lutefisk (cured fish), stave churches, reindeer meat, oil rigs, the Midnight Sun, the Aurora Borealis (Northern lights), skiing and cheese made of goats milk (brunost). Norway anno 2009 is a sparsely populated country where most systems and infrastructures are well organised and efficient.

May 17th is the National day in Norway (Constitution Day). It is a day of pomp

and ceremony, all Norwegians dress up in bunad (national costume), children and brass-bands have a huge procession to the castle, where they are greeted from the balcony by the Royal family.

The transport system is very good, trains, buses, trams and ferry are reliable, and flights depart on time. Shops, museums and attractions are open as advertised, and that public information in general is accurate and up-to-date Norwegian business culture is somewhat informal compared to that of other European countries. They tend to have flat organisations and address their managers by her/his first name. The majority of Norwegian employers expect employees to show initiative and assume responsibility for their own work.

### **Describe a few of the major tourist attractions in and around the city and their significance? e.g. historical, architectural, etc.**

Oslo has some significant tourist attractions like the Holmenkollen Ski arena which is currently under construction of which will be completed toward the end of 2010. The Nobel Peace Centre attracts thousand of tourists annually from all corners of the globe. The Viking Museum, Kontiki museum and several other museums situated in the picturesque suburb of Bygdoy is only 10 minutes from the city centre by bus, taxi or ferry boat. The Vigeland sculpture park which is probably the most popular tourist attraction in Oslo is absolutely breathtaking and truly phenomenal. It took the sculptor 40 years to complete these sculptures made from bronze and gran-



Staff members at the Oslo Embassy on Freedom Day

ite. Norwegians love sculpture and museums but to mention all of them would take up many pages.

**What were the biggest adjustments you had to overcome to live in Oslo?**

To arrive in any foreign country requires major adjustment and adaptation at different levels of life. One of the biggest challenges other than the language and culture barrier is the long and harsh winters. During winter you are lucky to enjoy + - four hours of daylight. Because in South Africa we are used to lots of sunshine and excellent weather conditions the darkness can be quite depressing

**What are the barriers/hurdles that make day to day living as a foreigner in Oslo difficult?**

Although the trend and level of society in Oslo compares well to other European countries and most of the population in the city speaks fluent English, Norwegians are very Norwegian and prefer to communicate in their language, one therefore has to at least have a basic understanding of the language so as to make everyday, life like shopping possible. Shoes and clothes sizes have different numbers and there are new kinds of fabrics to suit the weather conditions to get familiarized with. Food is very expensive due to imports and taxes but most products as we are used to in South Africa are available all year round.

**What do you miss most of South Africa?**

All South Africans in Oslo might probably have their own personal list of things of what they miss most about home, but mostly it has to be South Africa's excellent weather conditions. We also miss our own people (not only family) in our every day activities, such as our sports – men and woman, our medical system, language and customs, our own food, personal service, and the South African smile.

**What do you do when you get homesick?**

Thanks to modern technology homesickness can be drowned to a certain extent by phone calls, e-mails (with pictures) sms's, as well as the once in a while package containing favourite foodstuffs and other South African products. Colleagues and new friends can also help lightening the burden and put some sunshine in our lives. Our own music, special way of watching South African TV programmes and access to magazines and newspapers make being not at home more comely and bearable. It is also a good feeling when we have visitors from home, whether they are official visitors or family.

**How many people work at the Embassy?**

Presently 9 locally recruited staff members residing in Norway, and they are from

the Philippines, Indonesia, Sri Lanka and Norway. We have 5 transferred officials from South Africa who are employed at the Embassy in Oslo.

**What characteristic or attributes of the Norwegians do you think we as South African can learn from?**

One of the Norwegians most striking characteristics is their honesty. They are great humanitarians and do not claim to be the "peacemakers of the world".

Although they are fanatics when it comes to their own cultural background and celebrating their cultural events, their arms are open to the rest of the world and they welcome anyone graciously - especially the ones in need.

Norwegians do not boast about well, as it is frowned upon. Norway has immigrants from about 213 different countries. Their national resources are fiercely protected and managed. The country is very clean and you do not see any litter lying around. Their recycling skills are truly phenomenal.

Norwegians are health fanatics; they eat healthy and do a lot of exercise. There is a saying in Norway that if you are obese you either have a medical problem or you are a tourist.



Embassy members and SAA's representatives during the national carrier's Inaugural flight to Douala

## SOUTH AFRICAN AIRWAYS FLIES TO CAMEROON

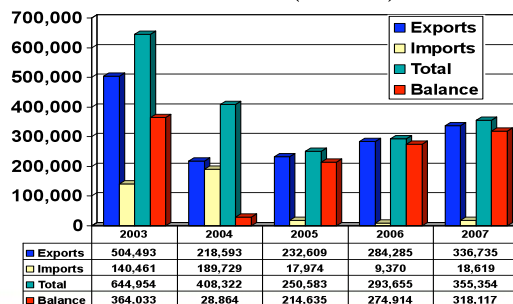
South African Airways (SAA) started operations to Douala, Cameroon's business capital on the 31st March 2009. The flight between Johannesburg and Douala allows for the first time direct air travel between Johannesburg and Central Africa's biggest business capital. This reduces distance between Johannesburg and Douala by air travel to 5.30 hours.

SAA is landing in Douala twice a week on Tuesday and Thursday evenings and departs for Johannesburg twice a week on Wednesday and Friday mornings. It is expected that the frequency of flights on this route will be increased overtime as SAA consolidates its operations in Douala. The Mission also hopes that SAA will in due course extend its operations to the capital city, Yaounde.

This development is a result of coordinated hard work and cooperation between the Mission in Yaounde; the Central Africa Desk at Head Office; the Department of Transport and SAA. Her Excellency Ntshadi Tsheole led the South African team to witness SAA inaugural flight to Cameroon held of 31 March 2009.

It is anticipated that the arrival of SAA in Cameroon will help achieve many objectives. At once, it is hoped that SAA operations will help accelerate bilateral trade between Cameroon and South Africa. Trade between the two countries has been gradually increasing since 2004. The graph below shows that SA exports to Cameroon increased by 54% from R218,593 000 to R336,735,000 between 2004 and 2007. While total trade steadily increased by 42% from R250,583,000 to R355,354,000 between 2005 and 2007.

South African Bilateral Trade with Cameroon (R'000)



Secondly, this development will contribute to the improvement of connectivity on the continent, at least between South Africa

and Cameroon. People can now travel direct between Johannesburg and Douala.

The Head Quarters of major Cameroon businesses are located in Douala, also the Head Quarters of South African Companies operating in Cameroon such as MTN and Tiger Brands are in Douala. SAA will make it easy for these and other business executives to travel between South Africa and Cameroon.

Thirdly, it will create a positive image of South Africa in Cameroon. Like success stories such as MTN business in Africa, SAA will come with its excellent world-class service based on quality, efficiency, reliability and value

for money that will at one level be a source of pride for the Mission in Yaounde and South Africans in Cameroon and at another level, serve to reassure Cameroonians and other Africans that Africa and South Africa in particular, can provide world-class service and that intra African partnership is the best

way to go. This in turn, would encourage more intra African partnerships as envisaged by NEPAD.





## AFRICA DAY IN LISBON

Celebrating together: Africa Day in Lisbon, Portugal

## FUNDRAISER IN BEIJING

The Southern African Development Community's Diplomatic Women's Association in Beijing (SADCDWA), whose chairperson is South Africa, held a fundraising Gala Dinner at Westin Hotel on 8 May 2009 for Chinese based charities that are focused on Women and Children. The Gala Dinner was a great success with a net surplus of Rmb 124,530.00 (an equivalent of R147, 329.76). A number of South African and Chinese companies assisted with sponsorships

On 5 June 2009, SADCDWA held another function at the South African Embassy, to hand over the money raised to four Chinese charity organisations.



Chairperson of the SADCDWA Mrs Ntshinga delivering her address at the fundraiser.  
(Top to bottom) Mrs Ntshinga handing over cheques to charity organisations



# SOUTH AFRICA, THE INTERNATIONAL CRIMINAL COURT AND THE AFRICAN UNION: REFLECTIONS ON THE BURDEN OF LEADERSHIP

**Dr Dire Tladi**  
**Legal Counsellor, SA Permanent**  
**Mission to UN, New York**

## INTRODUCTION

Over the last few months, a number of legal issues have arisen in the international system which have served to highlight the significance of the African Union (AU) on international relations. The arrest warrant for the Sudanese President issued by the International Criminal Court (the ICC) – and the consequent decisions of the AU – as well as the decisions by the AU on universal jurisdiction are two such issues.

From a purely international institutional perspective, these issues raise a number of questions, including the relationship between the AU and the UN, the relationship between the AU and its member states vis-à-vis broader international issues and the relationship between international organisations and their African member states vis-à-vis AU decisions. From a more normative perspective these issues have raised questions about whether the international system can move towards a more value-based system, centred around the protection of humanity and human rights without being accused of neo-imperialism – or falling into the trap of what one author referred to as the solipsism of empire (Koskenniemi 2005). Another normative question raised by these issues is the relationship between peace and justice and whether we can have one without the other.

The purpose of this paper is less ambitious and does not attempt to answer these complex yet important questions. Rather, this paper is concerned with a far more modest and practical question, namely what South Africa's role has been in these developments. The paper asks the question whether the decisions adopted by the AU have reflected South Africa's own policy inclination or whether the policy direction of the AU has been dictated from elsewhere. The paper asks this question as an invitation to begin exploring the nature and limits of our leader-



ship role on the continent – a role that is often assumed to exist.

While the sentiments expressed in this paper are applicable to both the ICC issue and the issue of universal jurisdiction, to avoid confusion, the focus of this paper rests solely on the ICC question. That the ICC issue is also the most sensitive given that it involves South Africa's multilateral obligations was also a factor in limiting the scope of the paper to the ICC.

## THE EVOLUTION OF THE AU POSITION ON THE ICC

In July 2008 the Prosecutor of the ICC applied for an arrest warrant against the President of Sudan, President Al Bashir. In the application it was averred that the conflict in Sudan was characterised by Arab subjugation over the African population with Al Bashir at the helm of the commission of various international crimes against the African population. In particular, the application sought to indict Al Bashir for genocide, crimes against humanity and war crimes. In March 2009, the ICC approved the indictment on crimes against humanity and war crimes.

Even before the confirmation of the arrest warrant by the ICC, African Union organs had begun questioning the wisdom of the Prosecutor to indict a sitting head of state – although this is permitted under the

Rome Statute establishing the ICC. The AU Peace and Security Council (the PSC) cautioned that such a move may threaten the peace process underway in Sudan. Accordingly, the PSC, in its communiqué of July 2008 called on the UN Security Council to defer the proceedings in accordance with Article 16 of the Rome Statute. This call by the PSC was endorsed by the AU Summit in February 2009 in Addis Ababa (AU/Dec.221(XII)).

In June 2009 and acting pursuant to Decision 221(XII), the AU Commission called for a meeting of Ministers of Justice of African States Parties to the ICC to “exchange views on the work of the ICC in relation to Africa”. Accounts of the meeting suggests that there were two camps, with one camp urging the respect for the integrity of the ICC as a judicial organ while underlining the importance of the request for Article 16 action. Another camp, however, sought to malign the ICC and called for refusal to cooperate with the ICC with regards to the Al Bashir indictment. At the end the meeting made a number of recommendations to the Assembly through the Executive Council, including the reiteration of the AU's “unflinching” support for measures aimed at fighting impunity and the support for the Assembly's decision on Article 16. Strangely, a number of proposals which did not garner support were included in the outcome document under the heading “proposals made on which there was no

consensus” – I say strangely because it is not common practice to include in the outcomes of a meeting, proposals which did not garner consensus. One of these proposals “on which there was no consensus” was that African states should consider not cooperating with the ICC.

At the AU Summit of July 2009, held in Sirte, Libya, the AU Summit adopted a decision an important element of which was based on this proposal “on which there was consensus”. In paragraph 10 of the AU decision on the ICC, the Summit decided that in view of the fact that the request by the African Union has never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC, relating to immunities, for the arrest and surrender of African personalities.

Lawyers are often accused of “being too legalistic” and for that reason, I have tried to avoid a legal analysis here. Nevertheless two points should be said about the reference to Article 98 of the Rome Statute. First, Article 98 provides that the ICC may not proceed with a request for surrender or cooperation which would require a State to act inconsistently with its international obligations relating to [diplomatic] immunities. However, in the light of Article 27 of the Statute which provides that immunities are no bar to the exercise of jurisdiction, it is doubtful that Article 98 can be used as a ground to refuse to cooperate with the Court in the absence of a specific agreement to that effect. Second, and more importantly, under South Africa’s constitutional system, it is the incorporating legislation that we apply, not the Rome Statute itself. The Implementation of the Rome Statute of the ICC Act (the Act) in section 4 ousts or makes inapplicable to the ICC laws relating to immunities. Therefore, to use Article 98 as a basis for refusing to cooperate would be, at best, highly controversial and at worst legally dubious.

### **SOUTH AFRICA’S ATTITUDE TOWARDS THE ICC’S INDICTMENT OF AL BASHIR**

In assessing South Africa’s policy objectives I will not rely on the open-ended and flexible language such as human rights, the promotion of democracy and a commitment to justice and international law – principles found

in the Department of International Relations and Cooperation’s Strategic Plan. Rather the policy objectives and inclination are assessed on the basis of specific action taken by the Government.

South Africa’s attitude with regards to the ICC indictment has been one which can be described as a two-track approach. Under this two-track approach, South Africa has consistently argued that peace and justice can and must be pursued together. In doing so, we have argued – admittedly sometimes not so clearly – that the political process ought to be separated from the judicial process and consequently that the failings of one process should not be imputed on the other process. Thus, South Africa has called for the respect of the ICC as a judicial body mandated to perform a judicial function – a judicial function which should be protected. Nevertheless South Africa has supported the Article 16 request by the AU – a distinctly political process – and has argued that the support for the ICC is fully consistent with the support for an Article 16 resolution.

This approach is reflected in, inter alia, the widely reported actions of the Government with respect to the invitation extended to President Al Bashir on the occasion of the inauguration of President Zuma. This approach was similarly evident in the participation of the South African delegation during the June 2009 AU meeting discussed above. By all accounts South Africa played a leading role in preventing the adoption of recommendations – as opposed to proposals made on which there was no consensus – which would threaten the integrity of the ICC and South Africa’s international law obligations. This support of the ICC was also evident in Addis Ababa and New York during the weeks leading up to the June meeting. Furthermore, South Africa’s Constitution places a particular significance on international law – examples of the high position occupied by international law in the South African Constitution can be gleaned in sections 39, 232 and 233. More importantly, South Africa’s own domestic legislation requires the respect for the ICC and cooperation with the Court.

### **ASSESSMENT AND CONCLUDING REMARKS**

In the light of the foregoing, it is difficult not to conclude that the AU Summit de-

cision reached on 3 July is contrary to the policy inclinations of South Africa as gleaned from South Africa’s laws and actions. This raises the question of South Africa’s leadership role within the AU. It raises the question whether South Africa is able to influence critical decisions within the AU as any leader ought to be able to do. Politically it is well known that the attacks on the ICC have been driven largely by Arab countries since the Organisation of Islamic Conference (OIC) has always had a hard line position against the ICC – a hard line position which has now been made an AU position. This may suggest that the leadership role in the AU resides in the North and not in the South. As I mentioned above, this analysis can also be applied to the question of universal jurisdiction – an issue on which the AU Summit took a decision before any internal consultations within South Africa had ever taken place. Similarly, an analysis of the decisions taken by the AU with respect to Security Council reform – including the rigidity of the Ezulwini consensus and transferring the power to negotiate from individual states to the Committee of Ten – reveals the difficulty that South Africa faces in influencing critical decisions of the AU.

The inability of South Africa to influence AU decisions to take into account – if not to reflect – South Africa’s international obligations and domestic policies and legislation also calls into question South Africa’s success in the “Great Debate”. While South Africa has been able to ward off a hurried move to an AU Government, the AU Summit decisions in question may effectively have subjugated South Africa’s policy and even legislation, to the interests of others on the African continent – and beyond if one includes the OIC which has an agenda different from that of South Africa. The decision may, in fact, have overridden South Africa’s own policy and legislation – the very essence of a supranational government.

A debate on South Africa’s role on the African continent is urgently needed. I do not argue here for an arrogant, imposing style of leadership. While recognising the need for responsible leadership of the “listen, learn and lead” type, I am also aware that a leadership must judged, ultimately, by influence.

Where were you...?

